

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

DEMOCRACY FORWARD  
FOUNDATION,  
1333 H Street NW, 11th Floor  
Washington, DC 20005,

*Plaintiff,*

v.

EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION,  
131 M Street NE  
Fourth Floor, Suite 4NWO2F  
Washington, DC 20507,

*and*

OFFICE OF MANAGEMENT AND  
BUDGET  
725 17th Street NW  
Washington, DC 20503,

*Defendants.*

Case No. 19-cv-2306

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**COMPLAINT**

1. Plaintiff Democracy Forward Foundation (“Democracy Forward”) brings this action pursuant to the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”), against Defendants Equal Employment Opportunity Commission (“EEOC”) and Office of Management and Budget (“OMB”) to compel compliance with FOIA and the production of responsive documents.

**JURISDICTION AND VENUE**

2. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.

3. Venue is proper under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e)(1).

4. Because Defendants have failed to comply with the applicable time limit provisions in FOIA, Plaintiff is deemed to have exhausted its administrative remedies pursuant to 5 U.S.C. § 552(a)(6)(C)(i).

### **PARTIES**

5. Plaintiff Democracy Forward Foundation is a not-for-profit organization incorporated under the laws of the District of Columbia and based in Washington, D.C. Democracy Forward works to promote transparency and accountability in government, in part, by educating the public on government actions and policies.

6. Defendant EEOC is a federal agency within the meaning of FOIA, *see* 5 U.S.C. § 552(f)(1), and is headquartered in Washington, D.C. EEOC has possession, custody, and control of records to which Plaintiff seeks access.

7. Defendant OMB is a federal agency within the meaning of FOIA, *see* 5 U.S.C. § 552(f)(1), and is headquartered in Washington, D.C. OMB has possession, custody, and control of records to which Plaintiff seeks access.

### **FACTUAL ALLEGATIONS**

#### **EEOC FOIA Request**

8. On May 8, 2019 Democracy Forward submitted a FOIA request to Defendant EEOC seeking the following records:

- Any and all records revealing discussions regarding the EEO-1 Component 2 pay data collection between the EEOC and any employees or representatives of any trade associations, lobbyists, or law firms, including but not limited to the
  - Chamber of Commerce of the United States
  - HR Policy Association
  - Associated Builders and Contractors
  - Associated General Contractors of America
  - Center for Workplace Compliance

- Institute for Workplace Equality
- National Association of Manufacturers
- National Federation of Independent Business
- National Retail Federation
- Restaurant Law Center
- Retail Litigation Center, Inc.
- Society for Human Resource Management
- DirectEmployers Inc.
- American Society of Employers
- Seyfarth Shaw LLP
- U.S. Chamber Litigation Center
- McGuiness, Yager & Bartl LLP
- Fortney & Scott
- Manufacturers' Center for Legal Action
- Retail Litigation Center
- Society of Human Resource Management
- Isler Dare, P.C.
- Fox Wang Morgan
- Littler Mendelson
- Littler Workplace Policy Institute
- Ogletree Deakins
- Business Roundtable

Ex. A.

9. The request was limited to records created between October 31, 2018 and the date the search is completed.

10. The request was limited to the Offices of the Chair, Vice Chair, and Commissioners; Office of Communications and Legislative Affairs; Office of the General Counsel; Office of the Legal Counsel; Office of Enterprise Data and Analytics; Office of the Executive Secretariat; and Office of Federal Operations.

11. The FOIA request further sought a waiver of all fees associated with the request.

12. EEOC sent Democracy Forward a letter on May 14, 2019 acknowledging receipt of the FOIA request on that date and assigning it tracking number 820-2019-000428.

13. EEOC sent Democracy Forward a letter on May 21, 2019 claiming a ten-day extension due to “unusual circumstances” and granting Democracy Forward’s request for a fee

waiver.

14. On June 7, 2019, an EEOC employee contacted Democracy Forward to request email domains for the entities listed in the FOIA request. Democracy Forward provided that information on June 18, 2019, and asked to discuss the timetable for EEOC's response to the request.

15. EEOC did not respond to Democracy Forward's June 18, 2019 request, nor did it respond to a July 8, 2019 email from Democracy Forward repeating the request to discuss a schedule for responding to the FOIA request "in the hopes of avoiding the need for litigation."

16. As of the date of this Complaint, EEOC has neither informed Democracy Forward whether it will comply with the request nor produced the requested records.

#### OMB FOIA Request

17. On May 7, 2019, Democracy Forward submitted a FOIA request to Defendant OMB seeking the following records:

- Any and all records revealing discussions regarding the U.S. Equal Employment Opportunity Commission's ("EEOC") EEO-1 Component 2 pay data collection between OMB and any employees or representatives of any trade associations, lobbyists, or law firms, including but not limited to
  - Chamber of Commerce of the United States
  - HR Policy Association
  - Associated Builders and Contractors
  - Associated General Contractors of America
  - Center for Workplace Compliance
  - Institute for Workplace Equality
  - National Association of Manufacturers
  - National Federation of Independent Business
  - National Retail Federation
  - Restaurant Law Center
  - Retail Litigation Center, Inc.
  - Society for Human Resource Management
  - DirectEmployers Inc.
  - American Society of Employers
  - Seyfarth Shaw LLP
  - U.S. Chamber Litigation Center

- McGuinness, Yager & Bartl LLP
- Fortney & Scott
- Manufacturers' Center for Legal Action
- Retail Litigation Center
- Society of Human Resource Management
- Isler Dare, P.C.
- Fox Wang Morgan
- Littler Mendelson
- Littler Workplace Policy Institute
- Ogletree Deakins
- Business Roundtable

Ex. B.

18. The request was limited to records created between October 31, 2018 to the date the search is completed.

19. The request was limited to the Office of Information and Regulatory Affairs (OIRA), the Office of the Director, the Office of the General Counsel, Office of the Deputy Director, Resource Management Offices, and Office of Legislative Affairs.

20. The FOIA request further sought a waiver of all fees associated with the request.

21. OMB sent Democracy Forward a letter on May 10, 2019 confirming receipt of the request and assigning it reference number 19-293.

22. Since that letter, OMB has not communicated with Democracy Forward about the FOIA request.

23. As of the date of this Complaint, OMB has neither informed Democracy Forward whether it will comply with the request nor produced the requested records.

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24. As of the date of this Complaint, Defendants EEOC and OMB have failed to notify Democracy Forward whether EEOC or OMB will comply with the FOIA requests in full, produce all requested records, or demonstrate that they are lawfully exempt from production. Nor have EEOC or OMB notified Democracy Forward of the scope of any responsive records

Defendants intend to produce or withhold, and the reasons for any withholdings, or informed Democracy Forward that EEOC or OMB may appeal any adequately specific, adverse determination.

25. Because EEOC and OMB have “fail[ed] to comply with the applicable time limit provisions” of the FOIA, even with the benefit of any extensions of time that EEOC or OMB might have claimed, Democracy Forward is “deemed to have exhausted [its] administrative remedies.” *Id.* § 552(a)(6)(C)(i).

### **CLAIM FOR RELIEF**

#### **Count One (Violation of the FOIA by EEOC), 5 U.S.C. § 552**

26. Plaintiff Democracy Forward incorporates by reference the foregoing paragraphs as if fully set forth herein.

27. By failing to respond to Democracy Forward’s request within the statutorily prescribed time limit, EEOC has violated its duties under 5 U.S.C. § 552, including but not limited to the duties to conduct a reasonable search for responsive records, to take reasonable steps to release all non-exempt information, and to not withhold responsive records.

28. Democracy Forward is being irreparably harmed by EEOC’s violation of the FOIA, and will continue to be irreparably harmed until EEOC is compelled to comply with the FOIA.

#### **29. Count Two (Violation of the FOIA by OMB), 5 U.S.C. § 552**

30. Plaintiff Democracy Forward incorporates by reference the foregoing paragraphs as if fully set forth herein.

31. By failing to respond to Democracy Forward’s request within the statutorily prescribed time limit, OMB has violated its duties under 5 U.S.C. § 552, including but not

limited to the duties to conduct a reasonable search for responsive records, to take reasonable steps to release all non-exempt information, and to not withhold responsive records.

32. Democracy Forward is being irreparably harmed by OMB's violation of the FOIA, and will continue to be irreparably harmed until OMB is compelled to comply with the FOIA.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff Democracy Forward respectfully requests that this Court:

1. Order Defendants to conduct a search for any and all responsive records to Democracy Forward's FOIA request using search methods reasonably likely to lead to discovery of all responsive records;
2. Order Defendants to produce, by a date certain, any and all non-exempt responsive records and a *Vaughn* index of any responsive records withheld under a claim of exemption;
3. Enjoin Defendants from continuing to withhold any and all non-exempt responsive records;
4. Order Defendants to grant in full Democracy Forward's request for a fee waiver;
5. Award Democracy Forward its costs, attorneys' fees, and other disbursements for this action; and
6. Grant any other relief this Court deems appropriate.

Dated: August 01, 2019

Respectfully submitted,

/s/ Jeffrey B. Dubner

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